



# OLR RESEARCH REPORT

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## **ENFORCING THE PREVAILING WAGE LAW AGAINST TOWNS**

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You asked what enforcement authority the state has over towns regarding Connecticut's prevailing wage law, which requires workers on public construction projects to be paid an hourly wage that is at least equal to the prevailing wage for the same work.

### **SUMMARY**

The state prevailing wage law requires the state, towns, or any agents of either that seek bids from contractors for public construction projects to require the contractors to pay the prevailing wage to construction workers if the project cost exceeds the thresholds that trigger the law.

The law does not give the state authority to impose penalties on towns who fail to abide by the law or who fail to alert a contractor that a project may be a prevailing wage project. But it does include penalties for contractors who violate it.

Contractors who fail to properly pay the prevailing wage can be debarred, which means they are prohibited from being awarded any public project contracts for a certain number of years. If a contractor files a false certified payroll in an attempt to conceal non-compliance, he or she would face fines and possible imprisonment.

Furthermore, the courts have ruled against contractors who sought claims against government contracting agencies for damages when the agency failed to notify the contractor that the project might be subject to

the prevailing wage. The Department of Labor (DOL) has indicated that in such cases it tries to informally negotiate between the two parties to attempt to reach a settlement rather than have the parties go to court.

## **PREVAILING WAGE BACKGROUND**

The state prevailing wage law applies to the state, its towns or any other political subdivision of the state, or agents of any of these parties when they contract for a public works project for (1) alterations and repairs of more than \$100,000 or (2) new construction of more than \$400,000 (CGS § [31-53](#)). The intent of the law is to guarantee that public works projects in Connecticut pay workers the prevailing wage paid in the area where the work is done (for more on how the rate is determined see OLR Report [2003-R-0253](#)).

The law requires that each contract for such construction work include specific language that requires the contractor to pay the prevailing wage to mechanics, laborers, and workmen employed on the project. This obligation is placed on the public agency issuing the contract.

The law is explicit about the penalties for contractors who knowingly fail to pay the prevailing wage. For the first offense the contractor faces a fine of between \$2,500 and \$5,000 and is debarred (i.e., disqualified) from bidding on public contracts until he or she makes full restitution of back wages plus an additional six months. The penalties increase with subsequent violations. Filing a false certified payroll on a prevailing wage project is a class D felony and the contractor may be fined up to \$5,000, imprisoned for five years, or both.

But while the law contains penalties for the contractor if it does not conform, it does not include any penalty for the state, town, or other public agent issuing the contract.

## **DOL ENFORCEMENT**

Officials at DOL's Wage and Hour Division, which enforces the prevailing wage law, note that the law does not include any penalty for a town that does not conform to it.

Towns are required to ask DOL for the current prevailing wage rates when they are preparing a project bid and to include notification that the project would be or could be a prevailing wage project in the bid notice. Gary Pechie, the division director, indicated there are roughly 20 cases a year when towns or state agencies do not ask for prevailing wage rates because they do not think the project is covered.

Often DOL gets involved when someone calls with a complaint that a project should be prevailing wage and then DOL investigates.

“We say, ‘It’s your duty as a town to follow the law,’” said Pechie. “But there is no penalty for them if they don’t. We use persuasion and appeal to their fairness.” But DOL enforces the law against contractors to ensure that workers are paid their legally entitled wages.

Sometimes if a project is determined to be prevailing wage after it is completed, and DOL determines the contractor owes the workers back wages, then DOL informally negotiates between the town and the contractor to settle it. The situations can lead to civil court actions if there is no agreement between the contractor and the town.

## **CASE LAW**

Pechie said that a contractor has never won an action against a town in a prevailing wage case. One example is the case of a paving company against a local school board where the Superior Court held that a contractor that engages in bidding on public works projects is expected to know the laws that it must comply with (*R. P. Dalton Asphalt Paving & Fuel Oil, Inc., v. Sharon Board of Education*, WL 1758628 (Super. Ct. 2005)). The court ruled the board was not liable for failing to inform the contractor that the additional work it sought would make the job a prevailing wage project. The court denied the plaintiff contractor, Dalton Asphalt Paving & Fuel Oil from winning \$16,415.40 in damages from the Sharon Board of Education.

Dalton had been the lowest bidder on the board’s project to reconfigure an existing parking lot and install a sidewalk, curbing, and catch basins. The contractor agreed to a contract on June 26, 2002 to provide materials and labor for \$85,774.50, with a provision to possibly add additional work. R. P. Dalton testified that when he asked if the job was prevailing wage, he was told it was not. He also testified that if he knew the job would be more than \$100,000, his bid would have increased by 25%.

Sam Herrick, the board of education employee who drafted the invitation to bid, testified that he did not believe the project was a prevailing wage job and that is what he informed prospective contractors. Town officials indicated they considered the job new construction, meaning it would fall under the \$400,000 threshold for prevailing wage rather than the \$100,000 threshold for repairs and alterations.

Dalton performed the work, including additional work the board requested, and the total cost exceeded \$100,000. Acting upon a complaint filed about the project, DOL investigated and determined the total work exceeded \$100,000 and the project was not new construction so the \$100,000 cost triggered the prevailing wage law. DOL then determined that Dalton owed his employees \$16,415.40.

### ***Unjust Enrichment Argument***

The board argued that Dalton's claims failed because there was a written contract which governed the rights and responsibilities of the parties and the board fully complied with the contract. Dalton never argued the board breached the contract, but claimed he was entitled to reimbursement because the board benefited unjustly from his services and he was entitled to be paid a fair value. In legal terms this argument is known as "unjust enrichment and quantum meruit."

The court found that unjust enrichment and quantum meruit arise when there is no legal contract between the parties. In this case there was a contract, so the court ruled there was no basis for recovery. Furthermore, the court found that Dalton was aware that additional work was a real possibility under the contract and that it would probably bring the cost over the \$100,000 threshold. In summary the court ruled, "A contractor who engages in bidding on public works projects is expected to know the laws with which he must comply."

Originally Dalton filed to appeal the ruling, but later the appeal was withdrawn.

JM:ro